

THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

DOCKET NO. 2006-107-W/S

IN RE:)
)
Application of United Utility Companies,)
Inc. for adjustment of rates and charges)
and modifications to certain terms)
and conditions for the provision of)
water and sewer service.)
_____)

**RESPONSE TO APPLICANT'S
MOTION FOR ORDER PROHIBITING
INTRODUCTION OR ADMISSION
OF REBUTTAL TESTIMONY OF
DR. JAMES EPTING**

Intervenor, North Greenville University (the "University"), hereby submits this Response to Applicant's Motion for Order Prohibiting Introduction or Admission of Rebuttal Testimony of Dr. James Epting.

In accordance with the Commission's Rules of Practice and Procedure, the University filed with the Commission the Rebuttal Testimony of Dr. James Epting on August 7, 2006 (the "Rebuttal Testimony"). After receipt of the same, Applicant filed the subject Motion in order to prohibit introduction of the Rebuttal Testimony based upon the Commission's "directive" that only the Applicant may file rebuttal testimony. The Commission's Docketing Department issued a letter dated April 21, 2006 in which it stated that the "Applicant filing Rebuttal Testimony" must file and serve such testimony by a particular day. However, this letter does not specifically limit rebuttal testimony to only the Applicant, and in fact, it goes on to provide all parties of record the chance to rebut testimony submitted by opposing parties in the form of surrebuttal testimony. Accordingly, even if the Docketing Department's letter is to be read to limit the title of "Rebuttal Testimony" to that of the Applicant, it in no way prohibits the University from submitting its own testimony in response to the testimony filed by the Applicant. While counsel for the University may have mistakenly named Dr. Epting's responsive testimony "rebuttal"

testimony rather than “surrebuttal” testimony, it is completely unreasonable to prohibit the introduction of such testimony and require the University to re-submit it under the designation “surrebuttal” testimony simply because of this harmless mistake.

The Applicant attempts to ignore the University’s right to submit such responsive testimony by flagrantly mischaracterizing Dr. Epting’s rebuttal testimony as direct testimony. Applicant’s argument is untenable, however, since Dr. Epting’s testimony clearly and specifically addresses points raised in the pre-filed testimony of Converse A. Chellis and Lena Sunardio. Dr. Chellis raises issues not previously considered or testified to by Dr. Epting, and thus Dr. Epting’s rebuttal testimony addressed these issues. Furthermore, Dr. Epting’s rebuttal testimony clarifies points made by Ms. Sunardio which were otherwise misleading. Thus, Dr. Epting’s rebuttal testimony clearly addresses matters not raised in his direct testimony and is therefore properly before the Commission.

The Commission provides all parties of record the right to respond to testimony filed by the other parties. Accordingly, it is entirely proper for the University to have submitted the “rebuttal” testimony of Dr. Epting, even if such testimony was mis-designated. It is frivolous and unreasonably contentious of the Applicant to move to prevent the introduction of Dr. Epting’s testimony when the University is so obviously allowed to file responsive testimony and the only irregularity with such testimony is its designation in the caption. With its Motion, Applicant is advocating the emphasis of form over content and is wasting the Commission’s time and resources. Moreover, Applicant continues to file repeated and baseless motions to limit or altogether prohibit the University’s participation in this rate case in an attempt to silence a customer from challenging what are alleged to be unfair business practices. Such inappropriate behavior should not be tolerated.

For the reasons set forth above, the Applicant's Motion should be denied.

Respectfully submitted,

s/ Duke K. McCall, Jr.

Duke K. McCall, Jr.

Rebecca H. Zabel

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CERTIFICATE OF MAILING

IT IS HEREBY CERTIFIED that a copy of North Greenville University's **Response to Applicant's Motion for Order Prohibiting Introduction or Admission of Rebuttal Testimony of Dr. James Epting** was served upon all interested parties by placing a copy of the same in the United States Mail, postage prepaid, on the 15th day of **August, 2006**, addressed as follows:

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Chief Clerk/Administrator
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s/Duke K. McCall, Jr.

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